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November 30, 2007

*Via ECFS*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Re: *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to  
47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence  
and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172*

Dear Ms. Dortch:

During the course of this proceeding, Verizon has provided voluminous evidence demonstrating that, in addition to competitive alternatives that exceed what was available in Omaha and Anchorage, competition from cable is just as widespread in the six MSAs for which Verizon seeks forbearance as it was in Omaha and Anchorage. The data the major cable operators in these MSAs recently submitted validate Verizon's prior showings and confirm that each of these MSAs is highly competitive. In particular, these data show that a significant percentage of wire centers in the six MSAs meet the "coverage threshold test" that the Commission adopted in Omaha and Anchorage for determining where forbearance from unbundling relief is appropriate. Although the CLECs argue that the Commission should impose a market-share test in addition to the coverage threshold test that the Commission used in its prior orders, it would be arbitrary and capricious for the Commission to do so.

REDACTED – FOR PUBLIC INSPECTION

## Cable Coverage Data

Four of the five major incumbent cable operators (Comcast, Time Warner Cable, Cox, and Charter) now have filed data that corroborate evidence Verizon submitted showing that cable voice services are widely available throughout the six MSAs.<sup>1</sup> Although Cablevision still has not provided data regarding its cable-network coverage,<sup>2</sup> including the homes passed or end-user locations served by that network, Cablevision has publicly stated that it offers voice services to *all* of its customers. *See* NY Pet'n at 5; NY Decl. ¶ 16; Verizon Reply Comments at 13, 46-48. It is therefore reasonable for the Commission to assume that Cablevision provides voice service to 100 percent of the households in the more than 200 wire centers it serves in the New York MSA.<sup>3</sup>

Taken together, the data submitted by the four cable companies and Cablevision's public statements show that cable voice services are now available to 75 percent of the households in approximately 650 of the 790 total wire centers in the six MSAs. This total includes wire centers that are served by two or more cable operators that when taken together meet this coverage threshold. Attachment A provides for each of the six MSA the list of the wire centers in which this coverage threshold is met. Attachment B describes the data and methodology used in Attachment A.

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<sup>1</sup> Letter from J.G. Harrington, Dow Lohnes PLLC, to Marlene H. Dortch, FCC, WC Docket No. 06-172, Attach. at 2-3 (Oct. 30, 2007); Letter from J.G. Harrington, Dow Lohnes PLLC, to Marlene H. Dortch, FCC, WC Docket No. 06-172, Attach. at 2-3 (Nov. 1, 2007); Letter from J.G. Harrington, Dow Lohnes PLLC, to Marlene H. Dortch, FCC, WC Docket No. 06-172, Attach. at 2-4 (Nov. 14, 2007); Letter from Brian W. Murray, Latham & Watkins LLP, to Marlene H. Dortch, FCC, WC Docket No. 06-172, Exhs. 1 & 4 (Nov. 5, 2007); Letter from Michael C. Sloan, Davis Wright Tremaine LLP, to Marlene Dortch, FCC, WC Docket No. 06-172 (FCC filed Nov. 9, 2007); Letter from K.C. Halm, Davis Wright Tremaine LLP, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 6, 2007).

<sup>2</sup> On November 19, 2007, Cablevision Lightpath ("CLI") – the CLEC affiliate of Cablevision that "only offers services to business customers" – submitted data describing "by zip code, the number of buildings CLI serves . . . and the number of buildings CLI would be willing and able to serve, within a commercially reasonable time over its own network with its full range of services." Letter from Chérie R. Kiser, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. to Marlene Dortch, FCC, WC Docket No. 06-172, at CLI Amended Response to WCB No. 1 (Nov. 19, 2007). Although Cablevision's data confirm that it is already serving a large number of lit buildings and business customers, and that its fiber network is capable of reaching far greater numbers, Cablevision fails to provide any data regarding the locations or customers served by its cable network.

<sup>3</sup> According to Verizon's data, as of December 2006, Cablevision had obtained E911 listings in at least **[Begin Highly Confidential]** **[End Highly Confidential]** wire centers in the New York MSA. *See* Attachment A, Exhibit 1. This is based on Verizon's low-end estimate of the wire centers in which Cablevision has obtained E911 listings. It includes only those E911 listings that Verizon can match to a wire center with certainty, because the NPA-NXX associated with the listing is assignable to only one possible wire center. Thus, this figure does not implicate any of the allocation issues that CLECs have raised as a concern with respect to E911 listings that have an NPA-NXX associated with multiple wire centers. It is therefore likely that Cablevision serves even more wire centers than this low-end estimate indicates.

## **The Commission’s “Coverage Threshold Test” for Unbundling Relief**

Under the Commission’s prior forbearance orders, the standard to obtain relief from unbundling regulation is straightforward. In both Omaha and Anchorage, the Commission adopted a “coverage threshold test” that provided relief in every wire center in which cable voices services could be made available to 75 percent of homes in the wire center within a commercially reasonable time. The Commission did not adopt a market share standard, and it would make no sense to do so here.

### **A. In Prior Forbearance Decisions, the Commission Granted Unbundling Relief in Wire Centers Based on Whether They Meet a “Coverage Threshold Test”**

In both Omaha and Anchorage, the Commission granted unbundling relief on a wire center basis. In both cases, the Commission determined the wire centers in which relief was warranted based on a *single* test – the availability of cable voice service in that wire center, which the Commission labeled its “coverage threshold test.” This is clear from the plain language of both orders.

In Omaha, the Commission granted unbundling relief “based upon the development of sufficient facilities-based competition” in certain wire centers. *Omaha Forbearance Order* ¶ 57. In particular, it found that the “substantial intermodal competition for telecommunications services provided over Cox’s own extensive facilities is sufficient to grant forbearance.” *Id.* ¶ 59. The Commission explained that, “as a result of Cox’s investment in network infrastructure,” Cox was “providing telecommunications services over its own extensive last-mile facilities.” *Id.* Based on the presence of that facilities-based competitor, “combined with other statutory and regulatory safeguards,” the Commission granted unbundling relief in “9 of Qwest’s 24 wire centers in the Omaha MSA where competitive deployment is greatest.” *Id.* The Commission explained that unbundling relief was inappropriate in other wire centers where Cox had limited or no coverage and, therefore, no competitive carrier had “constructed substantial competing ‘last-mile’ facilities.” *Id.* ¶ 60.

The Commission gave effect to its decision by adopting a specific numerical coverage “threshold” test to identify the wire centers with sufficiently extensive competing last-mile facilities to justify unbundling relief. *Id.* ¶¶ 62, 69. For purposes of applying this test, the Commission found that an “intermodal competitor ‘covers’ a location where it uses its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC’s local service offerings.” *Id.* ¶ 60 n.156. The Commission found “competition to be sufficient to justify forbearance in wire center service areas where Cox is willing and able within a commercially reasonable

time of providing service to [Redacted] percent of the end user locations accessible from that wire center.” *Id.* ¶ 69.

The Commission further explained that its rationale for focusing on the availability of competing facilities, and the capability to use them to provide telecommunications service, was informed (as it must be) by prior unbundling orders implementing the directives of the D.C. Circuit, which focus on the *ability* to compete using alternative facilities, not on actual market share.<sup>4</sup> *See Omaha Forbearance Order* ¶ 63. In the *Triennial Review Order*, the Commission had determined that cable had not yet blossomed into a full substitute for local exchange and exchange access on a widespread basis, but recognized that cable companies might develop into facilities-based local exchange competitors in the future and invited parties to file forbearance petitions in any areas where that occurred. *Id.* ¶ 63 & n.164 (citing *Triennial Review Order* ¶ 39).<sup>5</sup> In Omaha, however, the Commission found that “Cox has been successfully providing local exchange and exchange access service services . . . without relying on Qwest’s loops or transport,” and that unbundling was not appropriate in the wire center where that was the case. *Id.* ¶ 64. The Commission explained that, because unbundling was intended as a transitional mechanism to facilitate the development of facilities-based competition, where facilities-based competition already exists the costs of unbundling outweigh the benefits. *See id.* ¶ 76. As the Commission noted, those costs are significant, and include “reducing the incentives to invest in facilities and innovation, and creating complex issues of managing shared facilities.” *Id.* As the Commission found, those costs are “unwarranted and do not serve the public interest” where facilities-based competition already exists. *Id.* ¶ 77. In addition, removing these costly regulations is in the public interest because it “place[s] intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms.” *Id.* ¶ 78.

To be sure, the Commission also looked at “the status of competition in the retail market as well as the role of the wholesale market in the Omaha MSA.” *Id.* ¶ 65. As the Commission explained, it looked at the retail market to confirm that Cox was in fact

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<sup>4</sup> *USTA v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002) (“*USTA I*”) (relevant inquiry is whether facility is “[s]uitable” for competitive supply”); *USTA v. FCC*, 359 F.3d 554, 575 (D.C. Cir. 2004) (“*USTA II*”) (Commission cannot “simply ignore facilities deployment along similar routes when assessing impairment”); *Covad v. FCC*, 450 F.3d 528, 546 (D.C. Cir. 2006) (“unbundling may be appropriate only after the Commission considers the *potential* for future competition.”).

<sup>5</sup> In the context of a forbearance petition, the Commission is not bound by the unbundling standards in the sense that it can remove unbundling requirements even where impairment is shown if the standards of section 10 are met. But the opposite is not true – the Commission cannot in this or any other context retain an unbundling requirement where the evidence shows that the impairment standard is not met. *See USTA I*, 290 F.3d at 422 (Commission may not impose unbundling “without regard to the state of competitive impairment in any particular market.”); *USTA II*, 450 F.3d at 563.

“successfully providing local exchange and exchange access services in these wire center service areas.” *Id.* ¶ 64; *see id.* ¶ 65. On this score, the Commission found that Cox both had facilities in these wire centers and had attracted a large number of mass-market customers, proving that it “is capable of competing very successfully using its own network to provide services.” *Id.* ¶ 66. Likewise, the Commission found that, given that Cox was “actively marketing itself” to enterprise customers, had attracted a number of significant Omaha businesses as customers, and that its enterprise sales were growing, it was a “substantial competitive threat” for enterprise customers as well as mass-market customers. *Id.* ¶ 66 & n.177. But the entire focus of the Commission’s discussion of actual retail competition was on confirming that Cox was capable of competing, and not on any arbitrary measure of market share. Indeed, the Commission did not even have market-share data for enterprise customers.

The Commission also looked at the role of the wholesale market as providing additional safeguards that competition would continue to thrive and that unbundling obligations are no longer necessary, with respect to both mass-market and enterprise customers. *See id.* ¶¶ 67-68. The Commission specifically noted the continuing wholesale obligations under section 271, and the duty to provide interconnection and collocation pursuant to section 251(c)(4). *See id.* The Commission also recognized that carriers were successfully competing for enterprise customers using special access, as well as deploying their own facilities. *See id.* ¶ 68. But, again, the focus was on the fact that alternative ways to serve retail customers remained, and not on market share.

The *Anchorage Forbearance Order*<sup>6</sup> confirms that the Commission’s unbundling analysis in Omaha relied on a single test based on coverage, and that the same approach also was used in Anchorage. As an initial matter, non-dominance was not an issue in that proceeding, so the Commission did not undertake a dominance analysis. This confirms that a finding of non-dominance is not a threshold requirement for unbundling relief.

When it came to the unbundling issue, the Commission stated that it was granting forbearance from unbundling regulations by “apply[ing] a similar analysis” as used in Omaha, which looks at whether the cable operator “covers” a location with its network. *Anchorage Forbearance Order* ¶ 32. The Commission held that, it is “appropriate to grant forbearance relief only in wire center service areas where a competitor has facilities coverage of at least 75 percent of the end user locations accessible from a wire center.” *Id.* ¶ 31. Based on this analysis, the Commission found that in five wire centers “GCI ‘covers’ 75 percent of a wire center service area where it can use its own network, including its own loop facilities, to provide within a commercially reasonable time services that ‘offer the full range of services that are substitutes for the incumbent LEC’s

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<sup>6</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) (“*Anchorage Forbearance Order*”).

local service offerings.” *Id.* ¶ 32 (quoting *Omaha Forbearance Order* ¶¶ 60 n.56, 62); *see id.* ¶ 35 (“In 5 wire center service areas, which includes the downtown area in Anchorage, we find that GCI’s voice-enabled cable plant covers more than 75 percent of the end user locations that are accessible from those wire centers.”); *id.* ¶ 23.

As in Omaha, not once during its explanation and application of the coverage threshold test does the Commission in Anchorage refer to or rely on a secondary market-share test. *See id.* ¶¶ 32-38. In fact, the Commission made clear that it was irrelevant that GCI had only recently deployed its cable plant, and was still serving a “significant” number of customers using facilities leased from Qwest. *Id.* ¶ 30. The Commission held that, although “it will take GCI some time to migrate all of its existing customers to its own facilities,” “GCI nevertheless ‘covers’ the customers it is migrating because it already has invested in the wire center service area sufficient infrastructure to give it the economies of scale and scope necessary to serve those customers.” *Id.* ¶ 36. The fact that the Commission nonetheless granted forbearance demonstrates that it did so solely on the basis of whether the coverage threshold test was met, and that the share of customers GCI was serving over its own facilities (either in the MSA as a whole or in any given wire center) was not a factor.

Finally, the fact that the Commission granted unbundling relief for only a subset of wire centers in Omaha and Anchorage does not suggest that the Commission adopted some other test besides coverage in its analysis of forbearance from unbundling regulation. The reason Qwest was granted relief for only 9 of 24 wire centers in Omaha, was not because Cox had not achieved certain market penetration in those other 15 wire centers, but because Cox did not meet the threshold coverage test in those other wire centers. *See Omaha Forbearance Order* ¶ 60 (“Cox does not have any coverage at all in [Redacted] of Qwest’s 24 wire center service areas in the Omaha MSA, and in other wire center service areas has only limited coverage.”); *id.* (explaining that Cox is not able to provide the same level of competition where it has not “constructed substantial competing ‘last-mile’ facilities.”). Likewise, in Anchorage, the Commission found that ACS was entitled to forbearance in only five of 11 wire centers because GCI did not provide sufficient coverage in the other six wire centers. *See Anchorage Forbearance Order* ¶ 38 (“Unlike the 5 wire center service areas where GCI is concentrating its build-out, we are unable to find GCI has *deployed competitive facilities* to the same extent in the 6 wire center service areas where we deny ACS’s forbearance request.”) (emphasis added).

**B. It Would Be Unlawful for the Commission To Adopt a Market Share Test Here**

Just as the Commission did not use a market-share test in Omaha and Anchorage, it cannot arbitrarily depart from its prior orders and use one here.<sup>7</sup>

First, as explained above, a market-share test would be inconsistent with the underlying rationale for imposing unbundling regulation. The rationale for that extreme form of regulation exists only where it is necessary to facilitate the deployment of competitive facilities. Once those facilities have already been deployed, as is indisputably the case here, the costs of unbundling regulation outweigh the benefits. Requiring that competitors achieve a certain market share over their facilities before granting relief from unbundling means that the costs of unbundling will be imposed after the benefits have already been achieved. The Commission has accordingly “decline[d] to determine impairment based on a certain level of retail competition,” noting that “[w]hile it is true that retail competition is a goal of the 1996 Act, it is not the only goal, and a standard that focused exclusively on retail competition would do so at the expense of Congress’s other goals, such as investment in new facilities.” *Triennial Review Order* ¶ 114.

Second, adopting a market-share test here would make no sense for the very same reasons the Commission has repeatedly rejected such tests in other related contexts. The Commission has previously held that, where, as here, new technologies and new providers are emerging, competition “is more appropriately analyzed in view of larger trends in the marketplace, rather than exclusively through the snapshot data that may quickly and predictably be rendered obsolete as th[e] market continues to evolve.”<sup>8</sup> The Commission accordingly will “consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.”<sup>9</sup> In particular, market share analysis “may misstate the competitive significance of existing firms and new entrants.”<sup>10</sup> The Commission has recognized that

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<sup>7</sup> *Telephone & Data Sys. v. FCC*, 19 F.3d 42, 49 (D.C. Cir. 1994) (“The Commission may overrule or limit its prior decisions by advancing a reasoned explanation for the change, but it may not blithely cast them aside.”); *Honeywell Int’l, Inc. v. NLRB*, 253 F.3d 119, 123 (D.C. Cir. 2001) (“Without more, the Board’s departure from precedent without a reasoned analysis renders its decision arbitrary and capricious.”).

<sup>8</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 50 (2005).

<sup>9</sup> *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 41 (2004) (“AT&T Wireless/Cingular Order”).

<sup>10</sup> *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 74 (2005).

“the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.”<sup>11</sup>

Third, there is nothing in the specific factual record here that could justify a departure from the coverage-based approach the Commission took in Omaha and Anchorage. Indeed, if anything, there is an even stronger basis to predict that competition will continue to flourish in the six MSAs here than in Omaha or Anchorage. Verizon has demonstrated, and the cable companies have confirmed with their own data submissions, that cable voice services are just as widely available in the six MSAs as they are in Omaha. In fact, Attachment A demonstrates that such services are even more widely available here, which reflects the fact that in the past two years cable companies have made huge investments to offer voice services to all or virtually all of their customers. *See also* Verizon Reply at 10-13, 43-49. Moreover, in the time since the Omaha and Anchorage decisions, cable companies have continued to gain experience in serving mass-market customers and have further enhanced their brand name and recognition in offering such services. Thus, if anything, cable companies are even more likely to succeed today than they were at the time of those prior orders. In addition, other forms of intermodal competition – such as wireless, fixed wireless, and over-the-top VoIP – also are more advanced in the six MSAs than they were in Omaha and Anchorage. *See* Verizon Reply at 1-5, 10-16, 19, 21-22, 27-29, 42-48, 53-57.

Finally, the fact that cable companies in the six MSAs have not yet achieved the same market share as the cable operators in Omaha and Anchorage is not grounds to depart from past precedent and adopt a market-share test. As the cable-reported data show, cable operators in each of the six MSAs have already won substantial numbers of customers, and these totals are rapidly increasing. Indeed, in the Virginia Beach MSA and both the Providence MSA and the entire state of Rhode Island (which lies within the Providence MSA), competitors’ share of mass-market voice connections already exceeds 50 percent. *See* Letter from Evan Leo, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, to Marlene Dortch, FCC, WC Docket No. 06-172, at 2-3 (Nov. 28, 2007). The notion that unbundling relief is appropriate only after competitors’ market share reaches an extremely high and arbitrary threshold would contradict the Commission’s entire rationale for granting forbearance in its prior orders because it would mean that the ILEC alone would be subject to burdensome and uneven regulation long after the time that competitive facilities have been ubiquitously deployed, are being used widely, and the purposes of unbundling regulation have been fulfilled. It would also be contrary to D.C. Circuit’s prior holdings and Commission orders implementing the statutory unbundling standards.

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<sup>11</sup> *AT&T Wireless/Cingular Order* ¶ 148.

**C. The Commission’s Prior Discussions of Retail Competition Cannot Be Construed As Adopting a Market-Share Test with Respect to Its Unbundling Analysis**

In the Omaha decision, the Commission did of course consider market share as part of its analysis of whether to forbear from dominant-carrier regulation. This is consistent with the Commission’s established practice in previous non-dominance decisions where it examined market share as one of several factors that it considered.<sup>12</sup> And consistent with those prior orders, the Commission made clear both that it was not establishing a bright-line market share test to obtain relief, and that it was looking at market share only as one of several factors relevant in measuring competition. *See Omaha Forbearance Order* ¶ 17 n.52 (“We are mindful that, when determining whether a carrier has market power in conducting a dominance analysis, the Commission must not limit itself to market share and look to all four factors that the Commission traditionally considers.”) (citing *AT&T v. FCC*, 236 F.3d 729, 736-37 (D.C. Cir. 2001)). The Commission also looked at “market elasticities and structure” and found that the incumbent cable operator’s “extensive facilities build-out” and “growing success in luring” customers demonstrated that competitive supply was sufficient to meet demand, and that entry barriers “are low.” *Omaha Forbearance Order* ¶¶ 35-37. The Commission also found that customers were willing and able to switch providers, as demonstrated by “growth in Cox’s residential access line base and corresponding decline in Qwest’s base.” *Id.* ¶ 33.

The Commission did not apply these tests to its unbundling analysis. In both the Omaha and Anchorage orders the Commission did in the context of its unbundling analysis “examine the status of competition in the retail market as well as the role of the wholesale market.” *Omaha Forbearance Order* ¶ 65; *Anchorage Forbearance Order* ¶ 10. But this examination did not involve, and is not equivalent to, a market-share test.

The Commission looked at retail competition to confirm that Cox was “capable of delivering both mass market and enterprise telecommunications services.” *Omaha Forbearance Order* ¶ 66. The Commission found that Cox had attracted a significant number of mass-market customers, which was evidence that Cox “is capable of

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<sup>12</sup> In prior orders, the Commission has declared carriers non-dominant when their market share was in the range of 60 to 70 percent. For example, at the time of the order declaring AT&T non-dominant for domestic long-distance services, the Commission cited “AT&T’s overall market share of 60 percent” and found that its share was “55.2 and 58.6 percent in terms of revenues and minutes respectively.” *Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, ¶¶ 67, 68 (1995). At the time, AT&T’s share of pre-subscribed lines was 70 percent. *See id.* at App. B, Fig. 1. Likewise, when the Commission declared AT&T non-dominant for international long-distance services, it found that AT&T’s overall market share was 59 percent, and that its “average market share” across more than 90 countries was 74 percent. *Motion of AT&T Corp. To Be Declared Non-Dominant for International Service*, Order, 11 FCC Rcd 17963, ¶¶ 39-40 (1996).

competing very successfully using its own network to provide services in the mass market.” *Id.* Likewise, the Commission explained that Cox was capable of using its network to serve enterprise customers, as evidenced by the fact that Cox was actively marketing itself to enterprise customers, had attracted a number of significant Omaha businesses as customers, and that its enterprise sales were growing. *Id.* ¶ 66. The Commission found that Cox therefore had a “demonstrated and growing capacity – and inclination – to compete for enterprise customers.” *Id.* ¶ 66 n.177. In neither case, however, did the Commission purport to adopt a market share test, or, in the case of enterprise customers, to even have any market-share information.

The Commission looked at the wholesale market in terms of what it viewed as the safeguards that would remain in place where forbearance from unbundling regulations was granted. *Id.* ¶¶ 67-68. The Commission found that Qwest would still have wholesale obligations under section 271 and basic interconnection and collocation obligations under section 251(c)(4). *See id.* The Commission further recognized that carriers were successfully competing for enterprise customers using special access, as well as by deploying their own facilities. *See id.* ¶ 68.

Nowhere in the Commission’s analysis of retail and wholesale competition did it state that it was conducting a market share analysis or that it was adopting a market-share test. Indeed, the Commission specifically stated that it was not conducting such an analysis. *See Anchorage Forbearance Order* ¶ 12 (“we decline to formally define product markets pursuant to a market power analysis . . . The Commission did not define product markets for the purpose of its UNE forbearance analysis in the *Qwest Omaha Order*.”). Moreover, the Commission’s unbundling analysis does not define a product or geographic market, which is a necessary and obvious first step in any market-share analysis. Although the Commission concluded that forbearance should be granted on a wire-center basis, none of its analysis of competitive lines (as opposed to coverage) was done at that level of granularity. To the contrary, the Commission merely provided data regarding the number of lines that the cable operator served in the entire MSA; and in Omaha (but not Anchorage), the Commission also gave the aggregate number of lines that Cox served across all nine wire centers for which it was granted relief. *See Omaha Forbearance Order* ¶¶ 66-69; *Anchorage Forbearance Order* ¶¶ 28, 30. The fact that the Commission granted relief on a wire-center basis, but did not analyze competitive lines on that basis, is further proof that the Commission did not conduct a market share analysis. In contrast, the Commission did analyze cable *coverage* on a wire-center basis, which was the only factor the Commission in fact used to determine where forbearance was appropriate.

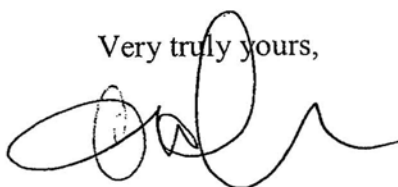
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In sum, concluding here that availability of facilities-based competition is inadequate to eliminate unbundling would not only be inconsistent with the

Commission's forbearance precedents, but also would be inconsistent with the underlying impairment analysis upheld by the DC Circuit. Since forbearance is intended as a tool to remove regulation no longer in the public interest even when the statute would otherwise require, it would be arbitrary to continue the regulation when, as here, the statutory standard for requiring unbundling is no longer met.

The Attachments contain Confidential Information and/or Highly Confidential Information and have been marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" and "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 06-172 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" in accordance with the First and Second Protective Orders in this proceeding.<sup>13</sup> A redacted version of this submission is being filed electronically on ECFS.

Very truly yours,

A handwritten signature in black ink, appearing to read 'E. Leo', with a stylized flourish extending to the right.

Evan T. Leo  
*Counsel for Verizon*

Attachments

cc: Dana Shaffer  
Don Stockdale  
Gary Remondino  
Jeremy Miller  
Tim Stelzig  
Nick Alexander  
Marcus Maher

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<sup>13</sup> *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Order ¶ 5, WC Docket No. 06-172, DA 06-1870 (rel. Sept. 14, 2006); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Order ¶ 5, WC Docket No. 06-172, DA 07-208 (rel. Jan. 25, 2007).

## ATTACHMENT A

REDACTED – FOR PUBLIC INSPECTION

REDACTED – FOR PUBLIC INSPECTION

## ATTACHMENT B

REDACTED – FOR PUBLIC INSPECTION

## ATTACHMENT B: METHODOLOGY

This attachment describes the methodology used to derive the cable coverage figures reported in Attachment A. For each individual wire center, cable coverage is the quotient of cable homes passed over total homes in the wire center (*i.e.*, cable coverage=cable homes passed/total households).

### *Cable Homes Passed*

With the exception of the New York MSA, cable homes passed is based entirely on the data reported by cable companies. Comcast reports its homes-passed by wire center for the New York, Boston, Philadelphia, Pittsburgh, and Providence MSAs.<sup>1</sup> Cox provides data on homes passed for the Providence and Virginia Beach MSAs; Cox does not report actual homes passed by wire center, but instead provides a range of the percentage of homes it passes on a wire center basis;<sup>2</sup> to be conservative, the low-end of that range was used here. The same approach was used for Charter, which reports the percentage of homes passed for the Boston MSA.<sup>3</sup>

With respect to the New York MSA, there are three major incumbent cable operators – Cablevision, Time Warner Cable, and Comcast. Time Warner Cable<sup>4</sup> and Comcast have provided homes passed data. Cablevision still has not provided such data, but has publicly stated that it provides voice service to all of the homes it passes, which includes close to 4 million homes in the New York MSA. *See* NY Pet’n at 5; NY Decl. ¶ 16; Verizon Reply Comments at 13, 46-48. The analysis for the New York MSA therefore assumes that in wire centers where Cablevision already has some voice customers (at least 10 residential E911 listings),<sup>5</sup> 100 percent of households in the wire center are covered by either Cablevision or Cablevision plus one or more other cable operator (Time Warner Cable and/or Comcast). As the maps Verizon has submitted demonstrate, each of the wire centers within Cablevision’s footprint is either wholly within Cablevision’s territory, or is served by Cablevision plus either Time Warner Cable or Comcast (and in a limited number of instances, both).<sup>6</sup>

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<sup>1</sup> Letter from Michael C. Sloan, Davis Wright Tremaine LLP, to Marlene H. Dortch, FCC, WC Docket No. 06-172 (Nov. 9, 2007).

<sup>2</sup> Letter from J.G. Harrington, Dow Lohnes PLLC, to Marlene H. Dortch, FCC, WC Docket No. 06-172 (Oct. 30, 2007); Letter from J.G. Harrington, Dow Lohnes PLLC, to Marlene H. Dortch, FCC, WC Docket No. 06-172 (Nov. 1, 2007).

<sup>3</sup> Letter from K.C. Halm, Davis Wright Tremaine LLP, to Marlene H. Dortch, FCC, WC Docket No. 06-172 (Nov. 6, 2007).

<sup>4</sup> Letter from Brian W. Murray, Latham & Watkins LLP, to Marlene H. Dortch, FCC, WC Docket No. 06-172 (Nov. 5, 2007).

<sup>5</sup> *See* Lew/Wimsatt/Garzillo Reply Decl., Exh. 3.A.

<sup>6</sup> These maps show that Cablevision’s territory in the New York MSA is contiguous and wholly covers the majority of wire centers it overlaps; some of the wire centers on the outskirts of Cablevision’s territory border either Comcast

With respect to the Virginia Beach MSA, the analysis omits the “Shipps Corner” wire center, which does not clearly correspond with a Verizon wire center, and the **[Begin Highly Confidential]** **[End Highly Confidential]**, for which Verizon does not serve residential customers. In addition, Cox reported the “Battlefield Boulevard” wire center as the same as the “Great Bridge” wire center. Verizon considers these wire centers distinct, however, and the analysis treats them as such.

### ***Households by Wire Center***

Attachment A provides the total number of households in each wire center for each of the six MSAs except Virginia Beach. In Virginia Beach, there is no need to calculate total households in a wire center, because the data that Cox provides is already stated in terms of a percentage of total homes it passes, rather than the actual homes passed. Although Cox also reports data in that manner for the Providence MSA and Charter does the same for the Boston MSA, in those cases, unlike in Virginia Beach, Cox and Charter are not the only cable operators serving certain wire centers. To determine total cable coverage for wire centers served by Cox or Charter plus one or more other cable operators, the percentage of homes passed in a wire center reported by Cox and Charter was converted to actual homes passed, based on the total number of households in the wire center.

The approach Verizon used to calculate households in a wire center is based on data from Claritas. Verizon previously provided “coverage” figures for Comcast and Time Warner Cable based on Claritas data.<sup>7</sup> As Verizon explained, in some cases there is a discrepancy between these data sources in which the homes passed that cable operators report for a given wire center exceed the total homes in that wire center according to Claritas data, but in these cases it is clear that the cable operator is capable of providing voice service to 75 percent or more of end-user locations in the wire center.

Although several CLECs have criticized the Claritas data and its use here,<sup>8</sup> an alternative approach to estimating cable coverage confirms the reliability of these data and the methodology that Verizon and the cable companies used. In Attachment A, Verizon has provided an alternative analysis of cable coverage. This analysis calculates the total homes in each wire center, by adding together:

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or Time Warner Cable or both. *See* NY Pet’n at Att. 3; Attachment 1. *See also* Letter from Andrew Lipman, *et al.*, Bingham McCutchen, to Marlene Dortch, FCC, WC Docket No. 06-172, at 3 (FCC filed Nov. 15, 2007) (“CLEC Nov. 15 Letter”) (“[Cable] networks typically are designed to be capable of serving all, or nearly all, residences within a particular contiguous geographic area.”).

<sup>7</sup> *See* Letter from Evan Leo, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, to Marlene Dortch, FCC (Nov. 16, 2007) (“Verizon Nov. 16 Letter”); Letter from Evan Leo, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, to Marlene Dortch, FCC (Oct. 31, 2007).

<sup>8</sup> *See* Letter from Andrew Lipman, *et al.*, Bingham McCutchen LLP, to Marlene Dortch, FCC, WC Docket No. 06-172, at 1-2 (Nov. 9, 2007) (“CLEC Nov. 9 Letter”).

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- (1) the number of primary residential lines that Verizon provides in the wire center as of September 2007,<sup>9</sup>
- (2) the number of residential lines that cable companies report serving in that wire center (or, in the case of Cablevision and RCN, its residential E911 listings),<sup>10</sup>
- (3) the number of residential lines served by other competitive carriers (the sum of non-cable residential E911 listings plus the residential lines served by resale or Wholesale Advantage),<sup>11</sup>

and then making a reasonable allocation for households that do not obtain any telephone service (5.4 percent, according to nationwide FCC data<sup>12</sup>), and for households in the wire center that are wireless-only (based on the assumption that 16 percent of households are wireless-only<sup>13</sup>). In Attachment A, data that were summed for this analysis are marked, “Data Used To Calculate Households Based on Line Totals.”

This approach produces slightly different household totals in each wire center, both lower and higher, as compared to the Claritas data.<sup>14</sup> But regardless of which totals are used, the analysis of cable coverage is basically the same. *See* Attachment A. This analysis therefore confirms the overall reliability of using the Claritas data, and also further demonstrates that cable companies are capable of providing voice services to 75 percent or more of end-user locations in a significant number of wire centers in the MSAs at issue here. This analysis also demonstrates

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<sup>9</sup> This updates similar data that Verizon previously provided. *See* Lew/Wimsatt/Garzillo Reply Decl., Exh. 2.

<sup>10</sup> *See* Letter from J.G. Harrington, Dow Lohnes PLLC, to Marlene H. Dortch, FCC, WC Docket No. 06-172, Attach. at 2-3 (Oct. 30, 2007); Letter from J.G. Harrington, Dow Lohnes PLLC, to Marlene H. Dortch, FCC, WC Docket No. 06-172, Attach. at 2-4 (Nov. 14, 2007); Letter from Brian W. Murray, Latham & Watkins LLP, to Marlene H. Dortch, FCC, WC Docket No. 06-172, Exhs. 1 & 4 (Nov. 5, 2007); Letter from Michael C. Sloan, Davis Wright Tremaine LLP, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 9, 2007); Letter from K.C. Halm, Davis Wright Tremaine LLP, to Marlene H. Dortch, FCC, WC Docket No. 06-172 (Nov. 6, 2007); Lew/Wimsatt/Garzillo Reply Decl., Exhs. 3.A-3.C.

<sup>11</sup> *See* Lew/Wimsatt/Garzillo Reply Decl., Exhs. 1.A-1.F & 3.A-3.F.

<sup>12</sup> *See* Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Telephone Subscribership in the United States* at Table 2 (June 2007). This is a conservative assumption given that, because of the favorable demographics of the six MSAs, the number of households without telephone service of any kind is likely to be lower than for the nation as a whole.

<sup>13</sup> *See* S. Flannery, *et al.*, Morgan Stanley, *Cutting the Cord: Wireless Substitution Is Accelerating* at 3, Exh. 2 (Sept. 27, 2007) (Attachment 3 to Verizon Nov. 16 Letter).

<sup>14</sup> On an MSA-wide basis, the totals produced by this second method are very close to Census data. For example, in the New York MSA, this second method produces a total of 7,143,179 homes, compared to 7,338,417 according to the Census Bureau; in Boston, the totals are 1,720,444 compared to 1,811,783; in Philadelphia, the totals are 2,551,344 compared to 2,373,750; in Pittsburgh, the totals are 807,765, compared to 1,103,507; in Providence the totals are 680,130 compared to 673,884; and in Virginia Beach, the totals are 641,682 compared to 677,014. *See* Attach. A, Exhs. 1-5; U.S. Census Bureau, *County-Level Housing Unit Datasets*, [http://www.census.gov/popest/housing/files/HU-EST2006\\_US.CSV](http://www.census.gov/popest/housing/files/HU-EST2006_US.CSV) (2006 estimates for component counties).

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that in calculating cable coverage, the Commission must take account of wire centers in which there are multiple cable operators providing service in adjacent parts of the wire center. As shown in Attachment A, there are a number of wire centers in the relevant MSAs in which that is the case and where, when the networks of the multiple cable operators are combined, the cable-coverage threshold is met.

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